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FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 14, 1998

Mr. Jan Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4546
Friends for Jack Metcalf Committee

Dear Mr. Baran:

Based on a complaint filed with the Federal Election Commission on October 29, 1996, and information supplied by your clients, the Commission, on September 30, 1997, found reason to believe that Friends for Jack Metcalf Committee ("Committee") and Frank McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A), and instituted an investigation of this matter.

After considering all of the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

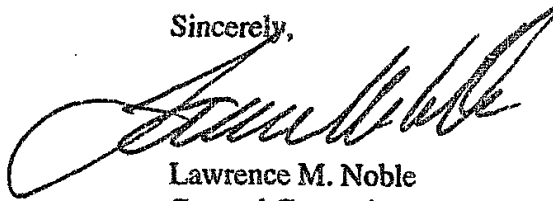
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days.

Mr. Jan Baran
MUR 4546
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Tara Meeker, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", written in a cursive style.

Lawrence M. Noble
General Counsel

Enclosure
Brief

2025-10-14 15:10:00

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Friends for Jack Metcalf)	MUR 4546
Committee and Frank M.)	
McCord, as treasurer)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On September 30, 1997, the Commission found reason to believe Friends for Jack Metcalf for Congress Committee (the "Committee") and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A). The Commission approved interrogatories and a request for production of documents to the Respondents, which were sent October 6, 1997.

This Office has received responses to the issued interrogatories. This brief describes and analyzes the information received in response to the interrogatories, together with the other information obtained. This brief also reflects this Office's intention to recommend that the Commission find probable cause to believe that Friends for Jack Metcalf and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

II. ANALYSIS

The Act requires that the treasurer of a political committee file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Under 2 U.S.C. § 434(b)(3)(A), each report must disclose the identification of each person making aggregate contributions to the reporting committee in excess of \$200 in the calendar year. The term "person" includes individuals. 2 U.S.C. § 431(11). In the case of an individual, identification is defined as the name, mailing

address, and the occupation of such individual, as well as the name of his or her employer.

2 U.S.C. § 431(13)(A) and 11 C.F.R. § 100.12.

The Act provides a "safe harbor" for political committees based on their efforts at compliance with the reporting regulations. When the treasurer of a political committee shows that "best efforts" have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i). In order for the treasurer and the committee to be deemed to have exercised "best efforts," they must first show that all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer. 11 C.F.R. § 104.7(b)(1). For each contribution received in excess of \$200 per year which lacks required contribution information, a committee can only demonstrate "best efforts" by: (1) making at least one follow-up, stand-alone request for missing information; (2) within thirty days of receipt of a contribution with incomplete contributor identification; (3) without also soliciting a contribution; and (4) reporting previously missing information in amendments to the reports. 11 C.F.R. § 104.7(b)(2).

As this Office has previously described to the Commission, all three 1996 Quarterly Reports were missing occupation and employer information on entries reflecting at least \$46,898 in contributions. The omission rate ranged between 63 and 74 percent during these three quarters.

In an apparent attempt to persuade the Commission not to proceed further with this matter, Respondents argue that they now follow all procedures to comply with the "best efforts" safe harbor provision and that amendments have been filed for the reports in question.

Respondents state that beginning in July of 1996, Friends for Metcalf drafted a letter to send to contributors for whom the Committee lacked information, after the Committee received a notice from the FEC. See letter from counsel dated December 1, 1997. They argue that the Committee "[a]t present . . . has amended its 1996 reports so that all but eleven of its reported donors for the entire year are listed with occupation and employer information. The Committee also states that it has instituted procedures designed to ensure that future reports contain occupation and employer information for campaign donors." Id.

The first requirement set out in the regulations governing the "best efforts" safe harbor involves making at least one follow-up, stand-alone request for missing information. Further, any such request must either be written or must be memorialized in writing. Respondents have stated that, until July 1996, the Metcalf Committee campaign manager and various volunteers occasionally telephoned a contributor whose employer information was missing, or looked up the information in local directories, and then passed this information along to the accounting firm in charge of filing FEC reports for the Committee. There is no evidence that this process was followed with any consistency or regularity; nor were each of the contacts reflected in writing. It was not until late July or early August of 1996, after the Committee received Requests for Additional Information ("RFAs") from the Reports Analysis Division ("RAD"), that the Committee instituted a regular practice of sending form letters requesting this missing information to contributors. Further, although once received by the accounting firm and this information was entered into a computer database, no amendments were made to correct the Quarterly Reports.

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The second requirement mandates that any follow up request for missing information be made within thirty days of receipt of a contribution with incomplete contributor identification. As previously noted, Respondents did not make a consistent practice of requesting additional information from contributors until July 1996 at the earliest. Since the April 1996 Quarterly Report, which covers contributions received through the end of March, listed several contributors who were missing employer information, all follow up requests for this report should have been made by the first of May at the latest. Kevin McDermott, Metcalf's Campaign Manager, recalls receiving a few responses from a form letter he sent out in August requesting contributor information, but has no specific recollection of what responses were in fact received. Lew Moore, Metcalf's Chief of Staff, remembers making calls to donors for this information in late October 1996, after the complaint in this matter was received by the Committee. See Statement of Lew Moore, p. 1. If letters were sent in August and phone calls made in October, there is a possibility that information was requested from donors listed either on the July or October 1996 Quarterly Report, within the thirty day allotted time period. However, since no amendments were made to these reports at that time, the Committee still failed to be in complete compliance with the "best efforts" safe harbor.

The third provision directs the committee to request missing contributor information without also soliciting a contribution. The sample "best efforts" letter sent by the Metcalf Committee to contributors with missing information starting in July 1996 does not include a solicitation with the request for employer name and address.

The fourth prong of the best efforts regulation requires that committees report previously missing information in amendments to the reports. This is the portion of the "best efforts" safe

harbor that the Respondents completely failed to follow. Amendments to the three Quarterly Reports for 1996 reflecting the missing contributor information were not received by the Commission until November 20, 1997, more than one year after the 1996 election. Amendments to the April and October Quarterly Report corrected all but two entries each; however, ten entries of one hundred and fifteen from the July Quarterly Report were still missing complete information.

Respondents' assertion that they have belatedly filed amendments to the 1996 reports and have finally instituted procedures to comply with the reporting requirements does not outweigh their failure to provide the occupation and employer for approximately 70 percent of their contributors in a timely fashion. The fact that procedures now exist for the 1998 election cycle cannot justify the violations committed by the Respondents during the 1996 election cycle. Amendments to the 1996 Quarterly Reports were not filed by the committee until November 19, 1997, more than one year after the election.

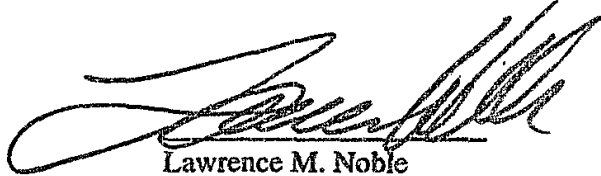
Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that Friends for Jack Metcalf and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to provide complete contributor information on either its April, July, or October 1996 Quarterly Reports.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that Friends for Jack Metcalf and Frank M. McCord, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

Date

4/13/98



Lawrence M. Noble
General Counsel

Staff assigned: Tara Meeker